

IN THE HIGH COURT OF BOMBAY AT GOA\

FIRST APPEAL NO. 224/2006

Micheal Dias Sapeco,
r/o. House No.1045, Segundo Bairro,
St. Cruz, Tiswadi, Goa.

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Appellant.

V/s.

1. Village Panchayat
St. Cruz, through its Chairman,
having his Office at
St. Cruz Tiswadi, Goa.
2. Collector of North Goa,
having his Office at
Collectorate, Panaji, Goa.
3. State of Goa,
by its Chief Secretary,
having his office at
Secretariat, Panaji, Goa.
4. Directorate of Panchayats
Government of Goa,
Junta House, Panaji, Goa.
5. Shri Crispino Fernandes,
since deceased, through his
legal heirs.
(a) Smt. Candida Dias Fernandes,
(b) Shri Junio Fernandes,
(c) Shri Leandro Fernandes,
(d) Shri Sebastiao Fernandes,
(e) Smt. Lina Fernandes,
(f) Smt. Beatriz Fernandes.

Residing at Segund Bairro,
St. Cruz, Tiswadi, Goa.

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Respondents.

Mr. M. S. Sonak, Advocate for the appellant.

Mr. R. G. Ramani, Advocate for respondent No.1.

Mr. M. D. Salkar, Advocate for respondents No.2 to 4.

Mr. S. M. Singbal, Advocate for respondents No. 5(a) to 5(f).

CORAM : P.V. KAKADE, J.

DATE : 18th October, 2006.

ORAL JUDGMENT :

Heard both sides. Rule. Rule made returnable forthwith.

2. This is an appeal preferred by the aggrieved plaintiff against the order passed by the IInd Ad hoc Additional District Judge, Fast Track Court, Panaji, dismissing the suit for perpetual as well as mandatory injunction.

3. The plaintiff filed the suit for perpetual and mandatory injunction and other consequential reliefs on the ground that he was residing at Segundo Bairro ward, situated in Village Panchayat of St. Cruz. It was his case that defendant No.1 had decided to construct a road leading to the house of the plaintiff and the said road would have benefited large number of houses situated in the vicinity. The plaintiff

alleged that defendant No.1 in the year 1989 had proposed to the State Government to withdraw land acquisition proceedings and the same were dropped at the request of the defendant No.1. Thereafter, at the request of defendant No.5, who was a member of the defendant No.1, in the year 1989 defendant No.5 made illegal encroachment on the proposed road and hence, the suit came to be filed. The defendant No.5 contested the suit, inter alia, denying the allegations made therein and submitted that there already existed a motorable road and the same was being used by the people residing in the locality. On such and other grounds, the suit was sought to be dismissed.

4. Both the parties led evidence and on the basis of the pleadings and the evidence, the solitary issue was framed to the effect whether the plaintiff proves that the defendants No.5(a) to 5(f) encroached on the motorable access by carrying on extension to their house. The finding on the said issue was recorded in the negative and the suit came to be dismissed.

5. The learned Counsel for the appellant vehemently urged that the cryptic judgment of one para did not adjudicate the issues raised by the parties in their pleadings, which has resulted in failure of justice. Perusal

of one para judgment itself shows that the entire suit is adjudicated only on the ground that certain map was not proved. It is to be noted that the plaintiff had filed an application for appointment of a Commissioner to bring on record the physical aspect of the alleged encroachment, however, it was left unattended and the suit was disposed of without passing any order on the said application. The learned Counsel for the respondents No.5(a) to 5(f) brought to my notice that the said application was made after the evidence was closed and just before passing of the judgment. However, the fact remains that it was incumbent upon the learned trial Judge to take cognizance of the said application either to allow or reject the application and then proceed with the matter. Apart from this aspect, I am also satisfied that the Judgment doesn't disclose proper judicial application of mind of the Judge while adjudicating the dispute, on merits. Therefore, I am convinced that the matter deserves to be remanded for trial afresh. It is further directed that the learned trial Judge while adjudicating the dispute, shall decide the application for appointment of Commissioner in the light of the observations made in the ruling of the Single Judge of this Court in the case of ***Kashinath R. Chopade v. Purushottam T Tekade***, 2005 (6) Bom. C.R. 267.

6. In view of this position, the order dated 24.3.2006 dismissing

the suit is, hereby, set aside. The matter is remanded to the trial Court for trial afresh, after giving opportunity to both sides to lead their evidence, if any. All the issues and contentions taken up by the parties are left open. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.